

*Mojave Desert*  
Air Quality Management District

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Draft  
Staff Report  
Proposed Rescission of  
Rule 1406 – *Generation of Emission Reduction  
Credits for Paving Unpaved Public Roads*

For rescission on  
03/22/2010

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**STAFF REPORT**  
**Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads***

**I. PURPOSE OF STAFF REPORT**

A staff report serves several discrete purposes. Its primary purpose is to provide a summary and background material to the members of the Governing Board. This allows the members of the Governing Board to be fully informed before making any required decision. It also provides the documentation necessary for the Governing Board to make any findings, which are required by law to be made prior to the approval or adoption of a document. In addition, a staff report ensures that the correct procedures and proper documentation for approval or adoption of a document have been performed. Finally, the staff report provides evidence for defense against legal challenges regarding the propriety of the approval or adoption of the document.

**II. EXECUTIVE SUMMARY**

The MDAQMD has the authority pursuant to California Health and Safety Code (H&S Code) §40702 to adopt, amend or repeal rules and regulations. The MDAQMD is proposing to rescind Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads* pursuant to the Writ of Mandate issued in *California Unions for Reliable Energy, Center for Biological Diversity and Frank Levias v. MDAQMD*, Superior Court, Riverside County, Indio Branch Case No. INC 071192 (CEQA) (“Writ of Mandate”).

**III. STAFF RECOMMENDATION**

Staff recommends that the Governing Board of the Mojave Desert Air Quality Management District (District) rescind Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads* and approve the appropriate CEQA documentation. This action is necessary to rescind Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads* to comply with the Writ of Mandate.

#### IV. LEGAL REQUIREMENTS CHECKLIST

The findings and analysis as indicated below are required for the procedurally correct rescission of Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads*. Each item is discussed, if applicable, in Section V. Copies of related documents are included in the appropriate appendices.

##### **FINDINGS REQUIRED FOR RULES & REGULATIONS:**

- X Necessity
- X Authority
- X Clarity
- X Consistency
- X Non-duplication
- X Reference
- X Public Notice & Comment
- X Public Hearing

##### **REQUIREMENTS FOR STATE IMPLEMENTATION PLAN SUBMISSION (SIP):**

- X Public Notice & Comment
- X Availability of Document
- X Notice to Specified Entities (State, Air Districts, USEPA, Other States)
- X Public Hearing
- X Legal Authority to adopt and implement the document.
- X Applicable State laws and regulations were followed.

##### **ELEMENTS OF A FEDERAL SUBMISSION:**

- N/A Elements as set forth in applicable Federal law or regulations.

##### **CALIFORNIA ENVIRONMENTAL QUALITY ACT REQUIREMENTS (CEQA):**

- X Ministerial Action
- N/A Exemption
- N/A Negative Declaration
- N/A Environmental Impact Report
- X Appropriate findings, if necessary.
- X Public Notice & Comment

##### **SUPPLEMENTAL ENVIRONMENTAL ANALYSIS (RULES & REGULATIONS ONLY):**

- X Environmental impacts of compliance.
- X Mitigation of impacts.
- X Alternative methods of compliance.

##### **OTHER:**

- N/A Written analysis of existing air pollution control requirements
- X Economic Analysis
- X Public Review

## V. DISCUSSION OF LEGAL REQUIREMENTS

### A. REQUIRED ELEMENTS/FINDINGS

This section discusses the State of California statutory requirements that apply to the proposed rescission of Rule 1406. These are actions that need to be performed and/or information that must be provided in order to rescind the rule in a procedurally correct manner.

#### 1. State Findings Required for Adoption of Rules & Regulations:

Before adopting, amending, or repealing a rule or regulation, the District Governing Board is required to make findings of necessity, authority, clarity, consistency, non-duplication, and reference based upon relevant information presented at the hearing. The information below is provided to assist the Board in making these findings.

##### a. Necessity:

The proposed rescission of Rule 1406 is necessary to rescind Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads* pursuant to the Writ of Mandate.

##### b. Authority:

The District has the authority pursuant to H&S Code §40702 to adopt, amend or repeal rules and regulations.

##### c. Clarity:

The rescission is clear in that the purpose for the rescission is easily understood.

##### d. Consistency:

The proposed rescission of Rule 1406 is in harmony with, and not in conflict with or contradictory to any state law or regulation, federal law or regulation, or court decisions because this rule was ordered rescinded pursuant to the Writ of Mandate. This rescission is a procedural action to remove the rule from the MDAQMD rulebook.

##### e. Non-duplication:

The proposed rescission of Rule 1406 does not impose the same requirements as any existing State or Federal law or regulation because this rescission is a procedural action to remove a rule from the MDAQMD rulebook pursuant to court order.

f. Reference:

The District has the authority pursuant to H&S Code §40702 to adopt, amend or repeal rules and regulations.

g. Public Notice & Comment, Public Hearing:

Notice for the public hearing for the proposed rescission of Rule 1406 will be published 02/19/2010. See Appendix “B” for a copy of the public notice. See Appendix “C” for copies of comments, if any, and District responses.

2. Federal Elements (SIP Submittals, Other Federal Submittals).

Submittals to USEPA are required to include various elements depending upon the type of document submitted and the underlying Federal law that requires the submittal. The information below indicates which elements are required for the proposed rescission of Rule 1406 and how they were satisfied.

a. Satisfaction of Underlying Federal Requirements:

The proposed rescission of Rule 1406 is not subject to the requirements for a State Implementation Plan (SIP) submittal because Rule 1406 was intended for inclusion in the SIP but was not submitted due to the filing of a lawsuit.

b. Public Notice and Comment:

Notice for the public hearing for the proposed rescission of Rule 1406 will be published 02/19/2010. See Appendix “B” for a copy of the public notice. See Appendix “C” for copies of comments, if any, and District responses.

c. Availability of Document:

Copies of the proposed rescission of Rule 1406 and the accompanying draft staff report will be made available to the public on or before 02/19/2010.

d. Notice to Specified Entities:

Copies of the proposed rescission of Rule 1406 and the accompanying draft staff report were sent to all affected agencies. The proposed rescission was sent to CARB and USEPA on 02/12/2010.



e. Public Hearing:

A public hearing to consider the proposed rescission of Rule 1406 has been set for 03/22/2010.

f. Legal Authority to Adopt and Implement:

The District has the authority pursuant to H&S Code §40702 to adopt, amend, or repeal rules and regulations and to do such acts as may be necessary or proper to execute the duties imposed upon the District.

g. Applicable State Laws and Regulations Were Followed:

Public notice and hearing procedures pursuant to H&S Code §§40725-40728 have been followed. See Section (V)(A)(1) above for compliance with state findings required pursuant to H&S Code §40727. See Section (V)(B) below for compliance with the required analysis of existing requirements pursuant to H&S Code §40727.2. See Section (V)(C) for compliance with economic analysis requirements pursuant to H&S Code §40920.6. See Section (V)(D) below for compliance with provisions of the California Environmental Quality Act (CEQA).

B. WRITTEN ANALYSIS OF EXISTING REQUIREMENTS

H&S Code §40727.2 requires air districts to prepare a written analysis of all existing federal air pollution control requirements that apply to the same equipment or source type as the rule proposed for modification by the district. Rule 1406 must be rescinded pursuant to Writ of Mandate. Therefore the preparation of a written analysis of existing pollution control requirements that apply to the same equipment or source type is not required.

C. ECONOMIC ANALYSIS

1. General

Rule 1406 was ordered rescinded pursuant to the Writ of Mandate. This rescission is a procedural action to remove the rule from the MDAQMD rulebook. No economic impact is anticipated by the rescission of Rule 1406.

2. Incremental Cost Effectiveness

Pursuant to H&S Code §40920.6, incremental cost effectiveness calculations are required for rules and regulations which are adopted or amended to meet the California Clean Air Act requirements for Best Available Retrofit Control Technology (BARCT) or “all feasible measures” to control volatile compounds, oxides of nitrogen or oxides of sulfur. The rescission of Rule 1406 is not subject

to incremental cost effectiveness calculations because this rule does not impose BARCT or “all feasible measures”.

#### D. ENVIRONMENTAL ANALYSIS (CEQA)

Through the process described below the appropriate CEQA process for the proposed rescission of Rule 1406 was determined.

1. The proposed rescission of Rule 1406 meets the CEQA definition of project.
2. Public Resources Code §21080(b)(1) creates a Statutory exemption for ministerial projects. “Ministerial” describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out (14 CCR §15369). The proposed rescission of Rule 1406 is exempt from CEQA review because this rescission is a procedural action to remove the rule from the MDAQMD rulebook pursuant to court order. The court itself is not an agency subject to the provision of CEQA (Public Resources Code §21063, 14 CCR §15379) and the MDAQMD does not have the discretion to ignore the court order. Therefore, since this rescission is required to comply with the Writ of Mandate, a Statutory Exemption, Ministerial Action (14 Cal. Code Reg. §15268) applies. Copies of the documents relating to CEQA can be found in Appendix “D”.

#### E. SUPPLEMENTAL ENVIRONMENTAL ANALYSIS

##### 1. Potential Environmental Impacts

The rescission of Rule 1406 is a procedural action to remove the rule from the MDAQMD rulebook. No environmental impacts are anticipated from this action.

##### 2. Mitigation of Impacts

N/A

##### 3. Alternative Methods of Compliance

N/A

#### F. PUBLIC REVIEW

See Staff Report Section (V)(A)(1)(g) and (2)(b), as well as Appendix “B”

## VI. TECHNICAL DISCUSSION

### A. SOURCE DESCRIPTION

Rule 1406 applies to applicants subject to the requirements of District Rule 1303(B) for PM<sub>10</sub>, who elect to generate PM<sub>10</sub> Emission Reduction Credits (PERCs) from the voluntary paving of unpaved public roads within the District, when such paving has occurred after the adoption of this Rule. PERCs created pursuant to Rule 1406 were limited in scope in that they were required upon creation to be linked to a specified project and used only for such project. Excess PERCs could not be placed in the ERC bank for later use and became null and void one year after the linked emissions unit start up.

The MDAQMD adopted Rule 1406 on 08/27/2007 and amended it on 10/27/08. The rule was ordered rescinded by the court pursuant to the Writ of Mandate. The MDAQMD is now officially rescinding this rule and deleting it from the rulebook.

### B. EMISSIONS

The rescission of Rule 1406 is a procedural action to delete a rule from the MDAQMD rulebook. No environmental impacts are anticipated from this action since no credits were issued to be used for specified linked projects following the adoption of the rule due to the filing of *California Unions for Reliable Energy, Center for Biological Diversity and Frank Levias v. MDAQMD*, Superior Court, Riverside County, Indio Branch Case No. INC 071192 (CEQA).

### C. CONTROL REQUIREMENTS

The rescission of Rule 1406 is a procedural action to delete a rule from the MDAQMD rulebook. Credits were not issued to new or existing projects under the provisions of this rule.

### D. PROPOSED RULE SUMMARY

This section gives a brief overview of the proposed rescission of Rule 1406.

The MDAQMD adopted Rule 1406 on 08/27/2007, amended the rule on 10/27/08, and is now officially rescinding this rule and deleting it from the rulebook.

### E. SIP HISTORY

#### 1. SIP History.

Rule 1406 was intended as a SIP rule, but was not submitted due to the filing of a lawsuit.

2. SIP Analysis.

Rule 1406 is not a part of the MDAQMD SIP, therefore a SIP analysis is not required.

## **Appendix “A”**

### **Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads* Iterated Version**

The iterated version is provided so that the changes to an existing rule may be easily found. The manner of differentiating text is as follows:

1. Underlined text identifies new or revised language.
2. ~~Lined-out text~~ identifies language which is being deleted.
3. Normal text identifies the current language of the rule which will remain unchanged by the adoption of the proposed amendments.
4. *[Bracketed italicized text]* is explanatory material that is not part of the proposed language. It is removed once the proposed amendments are adopted.

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## ~~Rule 1406~~

# ~~Generation of Emission Reduction Credits for Paving Unpaved Public Roads~~

### ~~(A) — General~~

#### ~~(1) — Purpose~~

- ~~(a) — The purpose of this Rule is to establish the procedures to ensure that PM<sub>10</sub> Emission Reduction Credits issued for the voluntary paving of unpaved public roads are Enforceable, Permanent, Quantifiable, Real, and Surplus.~~

#### ~~(2) — Applicability~~

- ~~(a) — This Rule shall apply to applicants subject to the requirements of District Rule 1303(B) for PM<sub>10</sub>, who elect to generate Paving Emission Reduction Credits (PERCs) from the voluntary paving of unpaved public roads within the District, when such paving has occurred after August 27, 2007.~~

#### ~~(3) — Interactions with Other District Rules~~

- ~~(a) — The provisions of District Rule 1402 Sections (D) and (E) do not apply to PERCs issued pursuant to this Rule.~~
- ~~(b) — If there is a conflict between the provisions of this Rule and those of District Rule 1402, the provisions of this rule shall apply.~~
- ~~(c) — PERCs may be used as offsets in accordance with the provisions of District Regulation XIII — *New Source Review* subject to the limitations contained in subsection (C)(6) herein.~~

### ~~(B) — Definitions~~

~~For the purpose of this Rule, the definitions contained in District Rule 1401 shall apply unless the term is otherwise defined herein.~~

- ~~(1) — “Degraded” — A Roadway Segment with a pavement condition score of less than 30% according to the pavement condition analysis criteria listed in the American Association of State Highway and Transportation Officials (AASHTO) *Guidelines for Pavement Management Systems*, July 1990, as determined by a state or local government with maintenance jurisdiction over the Roadway Segment.~~
- ~~(2) — “Enforceable” — Independently verifiable, program violations are defined, those liable can be identified, and the Administrator and the APCO can apply penalties and secure appropriate corrective action where applicable.~~

- ~~(3) — “Paving Emissions Reduction Credits” (PERCs) — Emissions Reductions Credits issued pursuant to this rule for the voluntary paving of unpaved public roads and subject to the use limitations contained in subsection (C)(6) herein.~~
- ~~(4) — “Permanent” — Continuing or enduring for the duration of the new or modified facility or emission unit requiring PM<sub>10</sub> offsets pursuant to District Regulation XIII — New Source Review.~~
- ~~(5) — “PM<sub>10</sub> Attainment Status Designation” — The attainment status for PM<sub>10</sub> as designated by the United States Environmental Protection Agency (USEPA) in 40 CFR §81.305 and the attainment status for Suspended Particulate Matter (PM<sub>10</sub>) as designated by the California Air Resources Board (CARB) in 17 CCR §60205.~~
- ~~(6) — “Quantifiable” — Able to be reliably and replicably measured by adhering to the quantification protocol set forth in Section (C)(3).~~
- ~~(7) — “Real” — Able to be demonstrated to have actually occurred.~~
- ~~(8) — “Roadway Segment” — A section of roadway between two definitive points, including but not limited to intersections, road ends or other demarcation points, which define a change in the roadway structure. The length of such segments shall be expressed in miles and tenths of miles.~~
- ~~(9) — “Surplus” — The amount of emission reductions from the paving of unpaved public roads that are, at the time of generation of an ERC, not otherwise required by federal, state, or local law, not required by any legal settlement or consent decree, and not relied upon to meet any requirement related to the California State Implementation Plan (SIP). However, emission reductions required by a state statute that provides that the subject emission reductions shall be considered surplus may be considered surplus for purposes of this Rule if those reductions meet all other requirements of this section. Examples of federal, state, and local laws, and of SIP-related requirements, include, but are not limited to, the following:
  - ~~(a) — The federally approved California SIP;~~
  - ~~(b) — Other adopted State air quality laws and regulations not in the SIP, including but not limited to, any requirement, regulation, or measure that:
    - ~~(1) the District or the State has included on a legally required and publicly available list of measures that are scheduled for adoption by the District or the State in the future; or~~
    - ~~(2) is the subject of a public notice distributed by the District or the State regarding an intent to adopt such revision;~~~~
  - ~~(c) — Any other source or source-category specific regulatory or permitting requirement, including, but not limited to, Reasonable Available Control Technology (RACT), New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP),~~~~



~~Best Available Control Measures (BACM), Best Available Control Technology (BACT), and the Lowest Achievable Emission Rate (LAER); and,~~

- ~~(d) — Any regulation or supporting documentation that is required by the federal Clean Air Act but is not contained or referenced in 40 C.F.R. Part 52, including but not limited to: assumptions used in attainment and maintenance demonstrations (including Reasonable Further Progress demonstrations and milestone demonstrations), including any proposed control measure identified as potentially contributing to an enforceable near-term emissions reduction commitment; assumptions used in conformity demonstrations; and assumptions used in emissions inventories.~~

## ~~(C) — Requirements~~

### ~~(1) — Applications~~

- ~~(a) — All applications for PERCs shall be submitted in writing and contain all the information required by the provisions of District Rule 1402 (B)(1)(b).~~
- ~~(b) — All applications for PERCs shall contain all of the following additional information:~~
- ~~(i) — The name, address and telephone number of a responsible official for the applicant (the responsible official will be the addressee of all official correspondence regarding the application and PERCs;~~
  - ~~(ii) — The name and telephone number of a contact person for inquiries regarding the application and PERCs, if different than the responsible official;~~
  - ~~(iii) — Information sufficient to identify the source and/or causation of the proposed PERCs, and the PM<sub>10</sub> Attainment Status Designation;~~
  - ~~(iv) — Information sufficient to allow the calculations specified in this rule to be performed;~~
  - ~~(v) — A statement from the applicant that the unpaved road(s) will be paved according to state or local government paving standards;~~
  - ~~(vi) — A letter or agreement from the appropriate state or local government stating that each Roadway Segment:~~
    - ~~a. — Has been inspected;~~
    - ~~b. — Has been described as being either gravel or non-gravel surfaced;~~
    - ~~c. — Will be adopted into the state or local transportation network, if not already part of the network; and,~~
    - ~~d. — Will be maintained.~~
  - ~~(vii) — A statement from the applicant indicating that any necessary environmental review for the paving of each Roadway Segment required pursuant to the California Environmental Quality Act~~

~~(CEQA) has been performed. Applicant shall provide a copy of such CEQA review upon District request.~~

~~(c) All applications for PERCs shall also include a PERC Generation Plan that consists of the following:~~

- ~~(i) A list of unpaved roads proposed for paving, including: location; length(s); Roadway Segment identification(s); a map, diagram or aerial photograph with the specific segment(s) indicated;~~
- ~~(ii) Calculations that quantify vehicle miles traveled (VMT) for each Roadway Segment, including all supporting data from traffic counts performed pursuant to Section (C)(2); and,~~
- ~~(iii) Calculations that quantify emissions from each Roadway Segment before and after paving, including all results and supporting data from any source specific testing performed pursuant to Section (E).~~

~~(d) No application for PERCs will be accepted until the applicable fees as specified in District Rule 313 are paid.~~

~~(e) Applications for PERCs may be withdrawn by the applicant in the same manner and pursuant to the same conditions as set forth in District Rule 1402(B)(1)(e).~~

~~(2) Determination of VMT~~

~~(a) VMT information required by subsection (C)(1)(c)(ii) shall be calculated using two separate traffic counts for each Roadway Segment, as follows:~~

- ~~(i) Each traffic count shall measure vehicular traffic over a 48 hour period, which may consist of two non consecutive 24 hour periods.
  - ~~a. For averaging within a traffic count, vehicular traffic shall be considered zero for each hour not monitored continuously during any given 24 hour period.~~~~
- ~~(ii) One traffic count shall be conducted on non holiday weekdays, and one traffic count shall be conducted on a non holiday weekend.~~
- ~~(iii) The VMT for each Roadway Segment shall be calculated by multiplying the time weighted average of the two separate traffic counts for that Roadway Segment by the Roadway Segment's length in miles to the nearest 1/10 of a mile.~~

~~(3) Determination of Emissions~~

~~(a) Emissions from unpaved and paved roads required by subsection (C)(1)(c)(iii) shall be calculated using the equations in section (F), and as follows:~~

- ~~(i) The equations in Section (F) shall be used to determine the PM<sub>10</sub> emission factor (in terms of pounds per VMT) for each Roadway Segment in an unpaved and paved condition;~~
- ~~(ii) Any default values contained in Section (F) shall be used to calculate PM<sub>10</sub> emission factors, unless the applicant provides source specific values obtained in accordance with Section (E);~~
- ~~(iii) The annual quantity of PM<sub>10</sub> emissions emitted from each Roadway Segment shall be calculated by multiplying the PM<sub>10</sub> emission factor by the annual VMT for each Roadway Segment as determined pursuant to subsection (C)(2); and,~~
- ~~(iv) The PM<sub>10</sub> emission reductions associated with paving an unpaved Roadway Segment shall be calculated as the difference, in tons per year, between the emissions from the road in the unpaved condition and the emissions from the road in the paved condition. Vehicle exhaust, brake wear and tire wear emissions cancel and are ignored for purposes of this calculation.~~

~~(4) Procedure for Issuance of PERCs.~~

~~(a) Determination of Completeness~~

- ~~(i) The APCO shall determine if the PERC application is complete or incomplete using the procedure set forth in District Rule 1402(B)(2) and determine that all additional information required pursuant to subsection (C)(1) has been provided.~~
- ~~(ii) The APCO shall use the procedure set forth in District Rule 1402(B)(2) to inform the applicant of the status of the application.~~

~~(b) Calculation of PERCs~~

- ~~(i) Upon the application being determined complete, the APCO shall calculate the amount of PERCs that may be generated for each Roadway Segment using the information provided in the PERC Generating Plan and the calculations set forth in Section (F).~~
- ~~(ii) The APCO shall determine whether to approve or disapprove the PERC Generation Plan in accordance with the standards set forth in subsection (C)(5).~~
  - ~~a. The APCO shall make this determination within thirty (30) days after the application for PERCs has been determined to be complete, or after such longer time as both the applicant and the APCO may agree upon in writing.~~
- ~~(iii) The APCO shall notify the applicant in writing of the determination.~~
  - ~~a. If the determination is to approve the PERC Generation Plan, then the notice shall include the amount of PERCs that may be generated from each Roadway Segment; or~~

- b. ~~If the determination is to disapprove the PERC Generation Plan, then the notice shall include an explanation of the reason for the disapproval.~~

~~(c) Public Notice and Comment~~

- ~~(i) After the APCO has determined to approve the PERC Generation Plan the APCO shall publish a notice in at least one daily newspaper of general circulation within the District and shall send a copy of the notice to USEPA, CARB and all persons who are included on a list of persons requesting notice, on file with the Clerk of the Board for the District.~~
- ~~(ii) The notice shall provide the following:~~
  - ~~a. The name and address of the applicant;~~
  - ~~b. The identifying information and location of the new or modified facility or emissions unit which will be using the proposed PERCs as offsets;~~
  - ~~c. A list of unpaved roads proposed for paving pursuant to the PERC Generation Plan including location(s), PM<sub>10</sub> Attainment Status Designation, and length(s) of Roadway Segment(s);~~
  - ~~d. The name, address and telephone number of a person from whom additional information may be obtained;~~
  - ~~e. The amount of PERCs proposed to be issued for each Roadway Segment upon completion of paving; and~~
  - ~~f. At least a thirty (30) day period in which interested persons may submit written comments to the District regarding the approval of the PERC Generation Plan and proposed issuance of PERCs.~~
- ~~(iii) The APCO shall accept all comments received during the comment period. The APCO shall consider and respond to all comments prior to the approval of the PERC Generation Plan.~~
- ~~(iv) The APCO shall include all comments and responses along with the records regarding the approval of the PERC Generation Plan and the issuance of the PERCs in the records of the new or modified facility or emissions unit which uses the PERCs as offsets.~~

~~(d) Approval/Disapproval of PERC Generation Plan~~

- ~~(i) Upon the expiration of the public comment period; after review and response of comments accepted, if any; and upon payment of the appropriate analysis fee, if any; the APCO shall approve or disapprove the PERC Generation Plan and notify the applicant of such action in writing.~~

~~(e) Demonstration of Completion of Paving Proposed Roadway Segments~~

~~(i) Upon completion of paving of any Roadway Segment(s) specified in a PERCs Generation Plan, the applicant shall submit a summary report to the APCO that identifies the Roadway Segment(s) paved, provides the date paving was completed, and includes a copy of the local or state government's report evaluating the condition of each Roadway Segment.~~

~~(f) Issuance of PERCs~~

~~(i) After the applicant demonstrates the completion of paving of all Roadway Segments contained in the PERC Generation Plan, the APCO shall issue the PERCs by including the appropriate information on the registration list and issuing a certificate pursuant to the provisions of District Rule 1402(B)(6).~~

~~(5) Standards for Granting PERCs~~

~~(a) The APCO shall only issue PERCs pursuant to this Rule, if the emission reductions will be Real, Quantifiable, Permanent, Enforceable and Surplus.~~

~~(b) The APCO shall only issue PERCs pursuant to this rule for a particular new or modified facility or emissions unit requiring PM<sub>10</sub> offsets pursuant to District Regulation XIII—New Source Review in the amount determined necessary for construction of the new or modified facility or emissions unit pursuant to the provisions of District Rule 1305.~~

~~(6) Use of PERCs~~

~~(a) PERCs may only be used by the applicant to provide offsets for a new or modified facility or emissions unit requiring PM<sub>10</sub> offsets pursuant to District Regulation XIII—New Source Review.~~

~~(b) If the amount of PERCs granted is greater than the amount of offsets required for the new or modified facility or emissions unit, the excess PERCs shall be retired no more than one (1) year after the startup of the new or modified facility or emissions unit.~~

~~(c) If the amount of PERCs granted is less than the amount of offsets required for the new or modified facility or emissions unit, then prior to issuance of the permit to operate, the applicant shall either:~~

~~(i) Obtain additional ERCs or PERCs pursuant to the provisions of this Regulation and District Regulation XIII, sufficient to make up the shortfall; or~~

~~(ii) Accept operational limitations such that the permitted emissions of the new or modified facility or emissions unit are equivalent to the amount of offsets surrendered.~~

~~(7) — Maintenance of PERCs~~

- ~~(a) — After paving a given Roadway Segment(s), the applicant shall, not less frequently than once every two years, obtain a copy of the local or state government's report evaluating the condition of the paved Roadway Segment(s), and determine if the report indicates that the Roadway Segment(s) is Degraded. The applicant shall submit a copy of the report, and a statement identifying any and all Degraded Roadway Segments, to the APCO within 60 days of receipt of the report. Failure to submit the periodic reports required by this section shall result in the Roadway Segment being classified as Degraded.~~
- ~~(b) — Within 12 months of the submittal to the APCO of a statement identifying a Degraded Roadway Segment(s), or failure of such submittal, the applicant shall provide replacement emission reductions by:
  - ~~(i) — Repaving the Degraded Roadway Segment(s) identified in subsection (C)(7)(a) and submitting a summary report as detailed in Section (C)(4)(c); or,~~
  - ~~(ii) — Surrendering ERC certificates issued pursuant to this Regulation or generating additional PERCs pursuant to the provisions of this rule equivalent to the total emission reductions approved by the APCO for the Degraded Roadway Segment(s).~~~~

~~(D) — Recordkeeping~~

- ~~(1) — The owner or operator shall maintain any and all records required by this Rule for at least thirty (30) years after the date of each entry, and required records shall be provided to District, state or federal personnel upon request.~~

~~(E) — Test Methods~~

- ~~(1) — Roadway Segment surface material silt content shall be determined by using the methodologies specified in Appendices C.1 and C.2 of USEPA AP-42 "Compilation of Air Pollutant Emission Factors" Fifth Edition. If an applicant performs any silt content analysis, or has such analysis performed on its behalf, the applicant must use the silt content determined from that analysis to calculate PM<sub>10</sub> emissions.~~

~~(F) — Emissions Calculation Equations~~

- ~~(1) — Equation 1 (from USEPA AP-42 §13.2.2) shall be used to estimate the quantity of PM<sub>10</sub> emissions from unpaved roads, using the default values provided below or a Roadway Segment specific value for *s*, as determined by the applicable method specified in Section (E):~~

Equation 1: ~~$$E_u = \frac{(k) \left( \frac{s}{12} \right)^a \left( \frac{S}{30} \right)^d}{\left( \frac{M}{0.5} \right)^c}$$~~

where:

~~$E_u$  = the unpaved road PM<sub>10</sub> emission factor with units of pounds per vehicle mile traveled  
 $k$  = empirical constant (1.8 for PM<sub>10</sub>) for units of lbs per VMT  
 $s$  = the surface material silt content with units percent (default value of 6.2 for gravel roads and 11.0 for non-gravel roads)  
 $a$  = empirical constant (1 for PM<sub>10</sub>)  
 $S$  = the mean vehicle speed with units of miles per hour (default value 20 mph for all unpaved roads)  
 $d$  = empirical constant (0.5 for PM<sub>10</sub>)  
 $M$  = surface material moisture content with units percent (default value 1)  
 $c$  = empirical constant (0.2 for PM<sub>10</sub>)~~

(2) ~~Equation 2 (from USEPA AP 42 §13.2.1) shall be used to estimate the quantity of PM<sub>10</sub> emissions from re-suspension of loose material on a road surface due to vehicle travel on a dry paved Roadway Segment after paving:~~

Equation 2: ~~$$E_p = k \left( \frac{sL}{2} \right)^{0.65} \left( \frac{W}{3} \right)^{1.5}$$~~

where:

~~$E_p$  = the paved road PM<sub>10</sub> emission factor with units pounds per vehicle mile traveled  
 $k$  = empirical constant (0.016 for PM<sub>10</sub>) for units of lbs per VMT  
 $sL$  = the road surface silt loading with units of grams per square meter (default value 0.23 for all paved roads, the low traffic paved road default value)  
 $W$  = average weight of vehicles traveling the road with units of tons (default value 3.0 for all unpaved roads)~~

[SIP: Submitted as amended 10/27/08 on mm/dd/yy]

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**Appendix “B”**  
Public Notice Documents

1. Draft Proof of Publication – Daily Press
2. Draft Proof of Publication – Riverside Press Enterprise

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## NOTICE OF HEARING

**NOTICE IS HEREBY GIVEN** that the Governing Board of the Mojave Desert Air Quality Management District (MDAQMD) will conduct a public hearing on March 22, 1406 at 10:00 A.M. to consider the proposed rescission of Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads*.

**SAID HEARING** will be conducted in the Governing Board Chambers located at the MDAQMD offices 14306 Park Avenue, Victorville, CA 92392-2310 where all interested persons may be present and be heard. Copies of the proposed rescission of Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads* and the Staff Report are on file and may be obtained from the Clerk of the Governing Board at the MDAQMD Offices. Written comments may be submitted to Eldon Heaston, Deputy APCO at the above office address. Comments must be received no later than March 19, 2010 to be considered. If you have any questions you may contact Tracy Walters at (760) 245-1661 extension 6122 for further information.

Pursuant to the Writ of Mandate issued in *California Unions for Reliable Energy, Center for Biological Diversity and Frank Levias v. MDAQMD*, Superior Court, Riverside County, Indio Branch Case No. INC 071192 (CEQA), Rule 1406 must be rescinded.

Pursuant to the California Environmental Quality Act (CEQA) the MDAQMD has determined that a Statutory Exemption, Ministerial Action (14 Cal. Code Reg. §15268) applies and has prepared a *Notice of Exemption* for this action.

Michele Baird  
Clerk of the Board  
Mojave Desert Air Quality Management District

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Michele Baird  
Clerk of the Board  
Mojave Desert Air Quality Management District

## **Appendix “C”**

### **Public Comments and Responses**

No comments received at this time.

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**Appendix “D”**  
California Environmental Quality Act  
Documentation

1. Draft Notice of Exemption – San Bernardino County
2. Draft Notice of Exemption – Riverside County

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## NOTICE OF EXEMPTION

**TO:** County Clerk  
San Bernardino County  
385 N. Arrowhead, 2<sup>nd</sup> Floor  
San Bernardino, CA 92415

**FROM:** Mojave Desert  
Air Quality Management District  
14306 Park Ave  
Victorville, CA 92392-2310

X MDAQMD Clerk of the Governing Board

**PROJECT TITLE:** Rescission of Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads.*

**PROJECT LOCATION – SPECIFIC:** San Bernardino County portion of the Mojave Desert Air Basin and Palo Verde Valley portion of Riverside County.

**PROJECT LOCATION – COUNTY:** San Bernardino and Riverside Counties

**DESCRIPTION OF PROJECT:** Pursuant to the Writ of Mandate issued in *California Unions for Reliable Energy, Center for Biological Diversity and Frank Levias v. MDAQMD*, Superior Court, Riverside County, Indio Branch Case No. INC 071192 (CEQA) Rule 1406 must be rescinded.

**NAME OF PUBLIC AGENCY APPROVING PROJECT:** Mojave Desert AQMD

**NAME OF PERSON OR AGENCY CARRYING OUT PROJECT:** Mojave Desert AQMD

**EXEMPT STATUS (CHECK ONE)**

- X Ministerial (Pub. Res. Code §21080(b)(1); 14 Cal Code Reg. §15268)  
Emergency Project (Pub. Res. Code §21080(b)(4); 14 Cal Code Reg. §15269(b))  
Categorical Exemption – Class 8 (14 Cal Code Reg. §15308)

**REASONS WHY PROJECT IS EXEMPT:** The proposed rescission of Rule 1406 is exempt from CEQA review because this rescission is a procedural action to remove the rule from the MDAQMD rulebook pursuant to court order. Since the rescission is a Ministerial Action required to comply with a court order, a Statutory Exemption, Ministerial Action (14 Cal. Code Reg. §15268) applies.

**LEAD AGENCY CONTACT PERSON:** Eldon Heaston **PHONE:** (760) 245-1661

**SIGNATURE:** \_\_\_\_\_ **TITLE:** Executive Director **DATE:** 03/22/2010

**DATE RECEIVED FOR FILING:**

## NOTICE OF EXEMPTION

**TO:** Clerk/Recorder  
Riverside County  
3470 12th St.  
Riverside, CA 92501

**FROM:** Mojave Desert  
Air Quality Management District  
14306 Park Ave  
Victorville, CA 92392-2310

X MDAQMD Clerk of the Governing Board

**PROJECT TITLE:** Rescission of Rule 1406 – *Generation of Emission Reduction Credits for Paving Unpaved Public Roads*.

**PROJECT LOCATION – SPECIFIC:** San Bernardino County portion of the Mojave Desert Air Basin and Palo Verde Valley portion of Riverside County.

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**DESCRIPTION OF PROJECT:** Pursuant to the Writ of Mandate issued in *California Unions for Reliable Energy, Center for Biological Diversity and Frank Levias v. MDAQMD*, Superior Court, Riverside County, Indio Branch Case No. INC 071192 (CEQA) Rule 1406 must be rescinded.

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**LEAD AGENCY CONTACT PERSON:** Eldon Heaston **PHONE:** (760) 245-1661

**SIGNATURE:** \_\_\_\_\_ **TITLE:** Executive Director **DATE:** 03/22/2010

**DATE RECEIVED FOR FILING:**

## **Appendix “E”**

### **Bibliography**

The following documents were consulted in the preparation of this staff report.

1. Peremptory Writ of Mandate, CALIFORNIA UNIONS FOR RELIABLE ENERGY, CENTER FOR BIOLOGICAL DIVERSITY AND FRANK LEVIAS v. MDAQMD, Superior Court, Riverside County, Indio Branch Case No. INC 071192 (CEQA)

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